



General Assembly

January Session, 2003

Amendment

LCO No. **5695**

SB0049605695SD0

Offered by:

SEN. COLAPIETRO, 31st Dist.

REP. FOX, 144th Dist.

REP. BERGER, 73rd Dist.

To: Subst. Senate Bill No. **496**

File No. 223

Cal. No. 149

**"AN ACT CONCERNING MINOR REVISIONS TO THE NEW HOME
CONSTRUCTION ACT, THE HOME IMPROVEMENT CONTRACTOR
ACT AND THE HOME SOLICITATION SALES ACT."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective January 1, 2004*) As used in sections 501 to
4 510, inclusive, of this act and section 42-158k of the general statutes, as
5 amended by this act:

6 (1) "Construction" means building, altering, repairing, installing or
7 demolishing in the ordinary course of business any: (A) Road,
8 highway, bridge, parking area or related project; (B) residential,
9 municipal or commercial building, stadium or other structure; (C)
10 airport, subway or similar facility; (D) park, trail, athletic field, golf
11 course or similar facility; (E) dam, reservoir, canal, ditch or similar
12 facility; (F) sewage or water treatment facility, power generating plant,

13 pump station, natural gas compression station or similar facility; (G)
14 sewage, water, gas or other pipeline; (H) transmission line; (I) radio,
15 television or other tower; (J) water, oil or other storage tank; (K) shaft,
16 tunnel or other mining appurtenance; (L) electrical wiring, plumbing
17 or plumbing fixture, gas piping, gas appliances or water conditioner;
18 (M) air conditioning conduit, heating or other similar mechanical
19 work; (N) leveling or clearing land; (O) excavating earth; and (P)
20 drilling wells of any type, including seismographic shot holes or core
21 drilling;

22 (2) "Construction contract" means a contract between a contractor
23 and owner for construction;

24 (3) "Contractor" means a person performing construction subject to
25 a written or verbal contract with an owner;

26 (4) "Owner" means a person having legal ownership of the building,
27 facility, land or item subject to a written or verbal contract with a
28 contractor;

29 (5) "Retainage" means money otherwise payable to a contractor or
30 subcontractor that has been withheld by an owner conditioned on
31 substantial or final completion of all work in connection with a written
32 or verbal construction contract; and

33 (6) "Subcontractor" means a person performing construction for an
34 owner not through a contract with the owner.

35 Sec. 502. (NEW) (*Effective January 1, 2004*) (a) Except as provided in
36 section 508 of this act, all construction contracts shall provide that
37 amounts due, except for retainage, shall be paid no later than thirty
38 days after the owner receives a request for payment from or on behalf
39 of a contractor or subcontractor the owner does not dispute. The owner
40 may pay the contractor by first class mail, electronic funds transfer or
41 hand delivery of the undisputed amount of a payment request based
42 on work completed or service provided under the contract. If the
43 owner fails to pay the contractor no later than thirty days after receipt

44 of a request for payment the owner does not dispute, the owner shall
45 pay interest to the contractor from the first day after payment was due,
46 computed at one and one-half per cent of the undisputed amount per
47 month or fraction of a month until payment is made. If an owner
48 receives an incomplete or improperly completed invoice, such owner
49 shall notify the sender of the invoice no later than seven days after the
50 date of receipt of the manner in which the invoice is incomplete or
51 improperly completed, and such owner shall have no further duty to
52 pay on the improperly completed invoice until it is resubmitted to the
53 owner in a reasonably acceptable form.

54 (b) All construction contracts shall provide that contractors and
55 subcontractors make payment to their subcontractors and suppliers for
56 amounts owed for work performed on the construction project no later
57 than seven days after receipt of payment from the owner, contractor or
58 subcontractor. If the contractor or subcontractor fails to pay a
59 subcontractor or supplier electronically or by first class mail or hand
60 delivery no later than seven days after receipt of payment, the
61 contractor or subcontractor shall pay interest to such subcontractor or
62 supplier beginning on the eighth day after payment was due,
63 computed at one and one-half per cent of the undisputed amount per
64 month or fraction of a month until payment is made. Said payment
65 provisions shall apply to all tiers of contractors, subcontractors and
66 suppliers.

67 (c) When making payments, an owner shall retain no more than
68 seven and one-half per cent of the cost of estimated work done and
69 value of materials stored on the construction site or stored and insured
70 off-site. A contractor or subcontractor shall withhold from its
71 subcontractors no more than the same percentage of retainage
72 withheld from such contractor or subcontractor by the owner.

73 Sec. 503. (NEW) (*Effective January 1, 2004*) An escrow account shall
74 be established for all retainage, subject to the following:

75 (1) Escrow accounts may be established only in state or national

76 banks chartered in this state or in savings and loan associations
77 domiciled in this state;

78 (2) Interest on escrow accounts shall be paid by the owner on a pro
79 rata basis at the time retainage payments are made by the owner to the
80 contractor. The contractor and its subcontractor shall pay such interest
81 to their subcontractors on a pro rata basis;

82 (3) The owner shall provide monthly reports to the contractor, as to
83 the value of the retainage being held in the escrow account and any
84 additions to or payments from the escrow account. Withdrawals from
85 the escrow account shall be made only subject to approval of the
86 owner;

87 (4) If the owner has entered into more than one construction
88 contract with the same contractor requiring the maintenance of escrow
89 accounts, the owner may elect to combine the amounts held as
90 retainage under each contract into one or more escrow accounts or
91 may establish a separate escrow account for each contract;

92 (5) The escrow account shall be terminated upon completion and
93 acceptance of the construction contract and full payment to the
94 contractor;

95 (6) All fees and expenses related to maintaining the escrow account
96 shall be paid by the owner;

97 (7) The form and provisions of the escrow account shall be included
98 in all solicitations for construction services and shall be provided to the
99 contractor and subcontractor prior to entering into a contract; and

100 (8) The owner is liable to the contractor, subcontractor or their
101 sureties for the owner's failure to maintain the escrow account.

102 Sec. 504. (NEW) (*Effective January 1, 2004*) All material and work
103 covered by partial payments are the property of the owner, but the
104 contractor and subcontractor are not relieved from the sole
105 responsibility for the care and protection of materials and work for

106 which payments have been made, except that the contractor and
107 subcontractor have no duty for the care and protection of materials
108 and work after the owner has assumed occupancy or beneficial use of
109 the work.

110 Sec. 505. (NEW) (*Effective January 1, 2004*) Not later than ten days
111 after final completion of the construction contract, any amounts due
112 the contractor or subcontractor under the terms of the contract shall be
113 paid to the contractor or subcontractor upon the presentation of the
114 following:

115 (1) A properly executed release and duly certified voucher for
116 payment;

117 (2) A release, if required, of all claims and claims of lien against the
118 owner arising under and by virtue of the contract other than such
119 claims of the contractor, if any, as may be specifically excepted by the
120 contractor or subcontractor from the operation of the release in stated
121 amounts to be set forth in the release; and

122 (3) Proof of final completion of the construction contract.

123 Sec. 506. (NEW) (*Effective January 1, 2004*) If a dispute arises between
124 the owner and the contractor or subcontractor as to work performed or
125 materials supplied, the owner may retain only the amount that is
126 reasonably calculated by such owner to cover the cost to correct a
127 deficiency in the work or materials supplied. All other money due to
128 the contractor or subcontractor shall be paid as provided in sections
129 502 to 507, inclusive, of this act. The money retained by the owner as
130 provided in this section shall be deposited into the escrow account for
131 the benefit of the contractor or subcontractor and shall not be paid to
132 the contractor or subcontractor until the dispute has been resolved by
133 either mutual agreement of the owner and contractor or subcontractor
134 or by order of a court of competent jurisdiction.

135 Sec. 507. (NEW) (*Effective January 1, 2004*) If an owner fails to deposit
136 retainage that is withheld or to release retainage as required by section

137 502, 505 or 506 of this act, the owner shall pay to the contractor an
138 additional one and one-half per cent of the amount not deposited or
139 released for each month or fraction of a month, until the retainage
140 amount is paid in full.

141 Sec. 508. (NEW) (*Effective January 1, 2004*) The provisions of sections
142 501 to 510, inclusive, of this act do not apply to construction contracts
143 for residential property containing four or fewer dwelling units or to
144 construction contracts of less than twenty-five thousand dollars total
145 value or to construction contracts relating to any public building or
146 public work of the state or a municipality.

147 Sec. 509. (NEW) (*Effective January 1, 2004*) Securities may be offered
148 by a contractor or subcontractor in lieu of retention, but the owner is
149 not obligated to accept such securities.

150 Sec. 510. (NEW) (*Effective January 1, 2004*) In an action to enforce the
151 provisions of sections 501 to 509, inclusive, of this act, a court may
152 award court costs and reasonable attorney's fees.

153 Sec. 511. Section 42-158k of the general statutes is repealed and the
154 following is substituted in lieu thereof (*Effective January 1, 2004*):

155 No construction contract may provide for any retainage in an
156 amount that exceeds seven and one-half per cent of the estimated
157 amount of a progress payment for the life of the construction project.
158 [This section shall not be construed to require that a construction
159 contract contain a retainage provision.]"